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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 28 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Replacement of Part 90 by Part 88) PR Docket No. 92-235
to Revise the Private Land Mobile)
Radio Services and Modify the)
Policies Governing Them)

COMMENTS OF LUBBOCK RADIO PAGING, INC.

Lubbock Radio Paging, Inc. (Lubbock Radio), by its attorneys, and pursuant to Section 1.415(a) of the Commission's rules, submits these comments in response to the Notice of Proposed Rule Making (NPRM) released by the Commission in the captioned proceeding on November 6, 1992.

INTEREST OF LUBBOCK RADIO

Lubbock Radio is licensed to operate private carrier paging (PCP) Station WNKY267 on the high power paging frequency 152.48 MHz. Lubbock Radio transmits on this frequency from three locations in and around Lubbock, Texas, one of which is licensed at an output power of 350 watts.

Lubbock Radio would be affected in a tangible and material way by proposed Rule Section 88.1067, which if implemented as drafted would reduce allowed output power to 300 watts, thereby constricting the service area for Station WNKY267.

THE COMMISSION SHOULD RETAIN EXISTING OUTPUT POWER LIMITS

Currently, the maximum allowed output power on VHF paging frequencies 152.48 MHz and 157.74 MHz is 350 watts, with no limit on maximum effective radiated power (ERP). Many paging

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stations operating on these frequencies achieve an ERP of 1000 watts or more by use of high gain antennas, and further expand service areas through transmitter sites with a significant height above average terrain (HAAT). Indeed, the referenced frequencies commonly are known as "high power paging frequencies," since they are employed to provide paging coverage over relatively large service areas without the costs associated with numerous transmitter sites.

However, some of this advantage would be lost under proposed Part 88 rules. If implemented as drafted, Rule Section 88.1067 would lower the maximum allowed output power to 300 watts, resulting in constriction of paging service coverage. The Commission's staff informally indicated at the March 31, 1993 public forum on the refarming docket that the reduction to 300 watts is a typographical error, and that their intention was not to change the output power or ERP limitations for 152.48 MHz and 157.74 MHz. Thus, the intent of the Part 88 drafters is that these frequencies would continue to be licensed with no limitation on allowed ERP, subject to maximum output power of 350 watts.

This intention is well reasoned, since neither of the stated bases for proposed power restrictions would apply to the high power paging frequencies. In the absence of applicable basis for power reductions, the public interest would be served by continuing existing power restrictions,

since existing rules would further the original purpose of the 152.48 MHz and 157.74 MHz frequencies.

The Commission based its proposed Part 88 power limitations on the beliefs that there is a widespread problem with "over-powered" systems, and that limiting ERP would facilitate spectrum reuse and exclusivity. NPRM, 7 FCC Rcd. 8105, 8112 - 3 (1992). Even if these bases were correct in other contexts, and Lubbock Radio doubts they are, neither basis applies to the 152.48 MHz and 157.74 MHz frequencies. First, there should not be any problem with "over-powered" systems operating on frequencies that are specifically devoted to high powered paging systems. Moreover, "refarming" considerations of spectrum reuse and exclusivity would not apply to paging frequencies. As noted above, these frequencies traditionally have been used by paging stations reaching large service areas. Thus, the regulatory intent of large service areas for the 152.48 MHz and 157.74 MHz frequencies contrasts sharply with proposed Part 88 initiatives to limit service areas for channels intended for exclusive use. Continuation of present power restrictions would fulfill public interest purposes for the high power paging frequencies by allowing continuing coverage of large service areas.

Additionally, the Commission has not proposed exclusive use for the 152.48 MHz and 157.74 MHz frequencies. The absence of exclusivity options in these frequencies is made

more conspicuous by the Commission's proposal in Private Radio Docket 93-35 to award exclusive use of other paging frequencies. Lubbock Radio notes that investment in paging stations is considerably more substantial at 152.48 MHz and 157.74 MHz than at many other paging bands proposed for exclusive use. Thus, where the Commission's conspicuous policy has been to retain shared use of the high power paging frequencies, the exclusivity rationale for Part 88 proposals would not serve as a basis for further power restrictions. Since proposed Part 88 power restrictions are premised upon exclusivity, and since the Commission has not seen fit to award exclusivity in the 152.48 MHz and 157.74 MHz frequencies, there is no reason to restrict power. Proposed Rule Section 88.1067 lacks the "basis and purpose" necessary to reasoned rule making. See 5 U.S.C. § 553(c); Independent U.S. Tanker Owners Committee v. Dole, 809 F.2d 847, 852 (D.C. Cir. 1987).

Finally, a reduction in allowed output power would restrict coverage by Lubbock Radio's existing system. In order to maintain the same coverage expected by its customers, Lubbock Radio would have to purchase additional transmitters, and lease more sites. Available antenna site leases in and around Lubbock, Texas already are expensive. Moreover, the potential paging market is constrained by a limited population in the Lubbock metropolitan area. The potential additional customer base is not large enough to support the increased

expense of adding new sites. Therefore, Lubbock Radio projects it may not be economically feasible to add more sites.

The result of implementation of power reductions would be contrary to the stated purpose of "refarming." While the Commission is attempting in this docket to expand private radio service, the power limitations proposed for 152.48 MHz and 157.74 MHz would have the opposite effect and constrict private radio service.

WHEREFORE, it is respectfully requested that the maximum allowed output power for 152.48 MHz and 157.74 MHz be continued at 350 watts, without any limitation on ERP.

Respectfully Submitted,

LUBBOCK RADIO, INC.

By

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